

# EXHIBIT 1

1 IN THE UNITED STATES DISTRICT COURT

2 IN AND FOR THE DISTRICT OF DELAWARE

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4 L.G. PHILIPS LCD COMPANY  
5 LTD.,

: CIVIL ACTION

6 Plaintiffs,

7 v.

8 TATUNG COMPANY, TATUNG  
9 COMPANY OF AMERICA, INC.; and  
VIEWSONIC CORPORATION,

10 Defendants.

: NO. 04-343 (JJF)

11 - - -

12 Special Master's Hearing taken at the Law  
13 Offices of Blank Rome, LLP, 1201 North Market Street,  
Suite 800, Wilmington, Delaware, beginning at 11:30 a.m.,  
14 on Friday, March 2, 2007, before Brian P. Gaffigan,  
Registered Merit Reporter.

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16 BEFORE: HONORABLE VINCENT J. POPPITI, SPECIAL MASTER

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18 APPEARANCES:

19 THE BAYARD FIRM  
BY: RICHARD D. KIRK, ESQ.

20 and

21 McKENNA LONG & ALDRIDGE, LLP  
22 BY: GASPARE J. BONO, ESQ.,  
CASS W. CHRISTENSON, ESQ., and  
23 REL S. AMBROZY, ESQ.,  
(Washington, District of Columbia)

24 Counsel for LG.Philips LCD Co. Ltd

Friday, March 2, 2007

SHEET 23		Friday, March 2, 2007	
86		88	
1	MR. MILLER: And so it's going to be a	1	representation today is that the newly identified
2	natural evolution. As the list that we get from LPL	2	witnesses are witnesses that are identified solely with
3	grows, the list from our people will grow.	3	respect to having knowledge about newly accused products.
4	THE SPECIAL MASTER: Can I expect,	4	Is that right?
5	commensurate with that -- and I understand why we're	5	MR. MILLER: Yes, they have been added
6	where we are with respect to how that list is growing.	6	to the list as people who have information -- well, there
7	Can I expect there is also going to be an opportunity to	7	are two sets of people there, Cass. One is, the first
8	accommodate the appropriate deposition of those newly	8	we're putting up is Kim Stepson (phonetic) that we're
9	identified witnesses?	9	putting up as a 30(b)(6) witness. She is someone I
10	MR. MILLER: As best as we can,	10	learned is more qualified than the person that had
11	absolutely, Your Honor.	11	previously been discussed with about it and so we put her
12	THE SPECIAL MASTER: I understand what	12	on the list and you are going to depose her.
13	you say, "as best as you can." You have some deadlines	13	The other people are technical people
14	you are having to live with and maybe there are going to	14	who have had dealings with new products. You asked for a
15	be a lot of busy days out there, but in the course of	15	successor to one of the people who was on the list
16	your discussions, and I expect those discussions will be	16	originally who have since left and they are successors to
17	ongoing, either as a result of continued production, as a	17	that function that was handled by that person.
18	result perhaps of decisions that I'll be making in the	18	MR. CHRISTENSON: Okay. I guess my only
19	next course of the next week, I expect accommodations	19	follow-up sought on this, Your Honor, is that I really
20	will be made when there are newly identified, newly	20	don't think that given the fact we are already double
21	accused products, therefore, newly identified witnesses	21	tracking defense, defendants' witnesses in some cases,
22	and therefore a need to create dates within the dates	22	I think it's really not feasible for us to be able to
23	I've already set.	23	work these additional depositions into the schedule and
24	MR. AMBROZY: Your Honor, it's Rel	24	complete them before March 30 particularly.
87		89	
1	Ambrozy. If I might jump in there.	1	THE SPECIAL MASTER: Well, we'll get to
2	ViewSonic just I think it was yesterday,	2	that when we come to it.
3	has taken issue with your order that they produce the OEM	3	MR. CHRISTENSON: Okay. Very well.
4	documents, for example.	4	THE SPECIAL MASTER: That's why it's
5	THE SPECIAL MASTER: I understand.	5	important to talk about it.
6	MR. AMBROZY: By the time that gets	6	Okay. Next please.
7	resolved, and let's just say that it's found in LPL's	7	MS. ROMAN: Your Honor, this is Tracy
8	favor that those documents should have been produced	8	Roman again. If there is nothing further on deposition
9	but that order is not handed down until after the close	9	issues, I'd like to remove from the record the people
10	of discovery in March, and I believe we talked about this	10	here in the D.C. office and let us sign-off.
11	earlier, but Your Honor is willing to accommodate further	11	THE SPECIAL MASTER: Please do.
12	depositions after the close of discovery?	12	MS. ROMAN: So removing from the hearing
13	THE SPECIAL MASTER: I mean I understand	13	is Tracy Roman of Raskin Pet, Scott Miller of Connolly
14	the reality of the process we're all involved in and	14	Bove, Frank Merideth of Greenberg Traurig, Derrick Aiuto
15	that reality is that I don't have the authority to issue	15	of McKenna Long and Gap Bono of McKenna Long.
16	an order that stands up to the date and through the	16	THE SPECIAL MASTER: Thank you, all.
17	trial. That's Judge Farnan's ultimate decision. And I	17	(The attorneys respond, "Thank you, Your
18	understand the impact that can have on any scheduling	18	Honor.")
19	order.	19	THE SPECIAL MASTER: Okay. Who is
20	MR. CHRISTENSON: Your Honor, Cass	20	marshaling the rest of the issues?
21	Christenson. I would like to clarify one thing to make	21	MR. NELSON: This is Manuel Nelson, Your
22	sure I understood Mr. Miller correctly. I just want to	22	Honor.
23	make sure	23	THE SPECIAL MASTER: Mr. Nelson.
24	As I understood Mr. Miller, his	24	MR. NELSON: If we're prepared to begin

SHEET 24	90	92
<p>1 with the motion that was scheduled to be viewed today, 2 ViewSonic's Motion to Compel LPL to Provide Technical and 3 Mounting Related Documents. I'll be handling that on 4 behalf of ViewSonic.</p> <p>5 THE SPECIAL MASTER: Okay. Just give me 6 one moment, please.</p> <p>7 (Pause.)</p> <p>8 THE SPECIAL MASTER: Okay. Let's 9 proceed with that then, please.</p> <p>10 MR. NELSON: As Your Honor I'm sure 11 recalls, in December of 2006 we had a hearing on several 12 motions, including ViewSonic's motion to compel similar 13 documents, and during that hearing and prior to that 14 hearing, there had been representations that LPL does not 15 use or implement the claimed invention. And based upon 16 those facts, there was certain --</p> <p>17 THE SPECIAL MASTER: Agreements.</p> <p>18 MR. NELSON: -- certain agreements made 19 as well as -- certain agreements were made regarding 20 discovery that was to be produced and certain discovery 21 became also not relevant based upon those represent- 22 ations. It had since been revealed that whether it was 23 due to inadvertence or mere mistake or perhaps advocacy 24 or something less, we learned that LPL does indeed</p>	<p>1 drill me down on my own memory -- by the end of January, 2 and if they haven't been, then the application is more 3 narrow because you are going to be asking me: They've 4 agreed to produce the documents. The time frame in which 5 they said they would produce them has passed. We want 6 them now.</p> <p>7 MR. NELSON: Right.</p> <p>8 THE SPECIAL MASTER: Is that it?</p> <p>9 MR. NELSON: May I ask for some 10 clarification, Your Honor?</p> <p>11 THE SPECIAL MASTER: Sure.</p> <p>12 MR. NELSON: Are we breaking ViewSonic's 13 motion into two parts? One, dealing with the documents 14 that were promised to be produced but perhaps have not 15 been produced; and, two, a set of documents for which 16 there was never any agreement for production?</p> <p>17 THE SPECIAL MASTER: Yes.</p> <p>18 MR. NELSON: Okay. I think I understand 19 that.</p> <p>20 THE SPECIAL MASTER: I mean I think that 21 is the most efficient way to do it.</p> <p>22 MR. NELSON: Yes, although I think we 23 can probably just address the motion regarding the full 24 scope of the documents because the ones that weren't</p>	
91	93	
<p>1 practice the invention that is claimed or that is 2 described in the patent in suit.</p> <p>3 THE SPECIAL MASTER: Let me ask the 4 question as you proceed.</p> <p>5 MR. NELSON: Okay.</p> <p>6 THE SPECIAL MASTER: Do both of you 7 agree with me that if I determine that LPL has complied 8 with the agreement that was forged and that the 9 information either provided during the course of the 10 hearing was accurate and/or the information that LPL 11 said they would gather after the hearing and provide to 12 you, if that was accurate, and I ultimately make a 13 determination that therefore LPL complied, gave accurate 14 information and complied with the agreement, then there 15 is really nothing else yet to do; correct?</p> <p>16 MR. NELSON: No. If we were in a 17 position where there are no new facts, that we're just 18 looking at the December 28th hearing, no, we would still 19 be seeking documents that were promised to be produced 20 during that hearing. In other words, the scope of this 21 motion would be far smaller.</p> <p>22 THE SPECIAL MASTER: I understand that. 23 But it would be a function of saying documents were 24 expected to have been produced -- and I know you will</p>	<p>1 produced are subsumed within the full scope of discovery 2 that we seek through our present motion.</p> <p>3 THE SPECIAL MASTER: Well, I'm not 4 going to tell you how to argue it. I told you the way I 5 approached it. I kind of told you how I approached 6 reading it, so you do it the way you think it is most 7 efficient to hold my attention.</p> <p>8 MR. NELSON: Okay. Well, then I'll 9 start with specifically in terms of we're actually 10 looking at the status report rather than the motion. And 11 so I think with that being the case, I would turn to ...</p> <p>12 THE SPECIAL MASTER: Status report of 13 what date?</p> <p>14 MR. NELSON: Status report of February 15 26th, 2007.</p> <p>16 THE SPECIAL MASTER: I have it in front 17 of me.</p> <p>18 MR. NELSON: And I think here we're 19 dealing with I think on page three, the last full 20 paragraph and the paragraph that spans page three to page 21 four.</p> <p>22 THE SPECIAL MASTER: Page three.</p> <p>23 MR. NELSON: Page three of the February 24 26, 2007 status report.</p>	

Friday, March 2, 2007

<p>SHEET 25</p> <p>94</p> <p>1 THE SPECIAL MASTER: Yes, beginning with</p> <p>2 "both LPL and ViewSonic filed?"</p> <p>3 MR. NELSON: No, the paragraph above</p> <p>4 that, the last full paragraph. "LPL confirms that."</p> <p>5 THE SPECIAL MASTER: I see it. Okay.</p> <p>6 MR. NELSON: So we have a disagreement,</p> <p>7 and this is one of those issues that maybe can't be</p> <p>8 resolved without bringing the documents in front of</p> <p>9 Your Honor, but they produced a paper printout of an</p> <p>10 agglomeration of information that probably corresponds to</p> <p>11 bill of materials for the entire manufacturing process of</p> <p>12 their product beginning with the gases that are used and</p> <p>13 the glass that is used to make the thin film transistors</p> <p>14 on the flat panel itself, all the way up to the pallets</p> <p>15 and boxes that are used to ship the flat panel display</p> <p>16 products.</p> <p>17 And while I can quibble about the</p>	<p>96</p> <p>1 not provide any information responsive to 85. So we are</p> <p>2 talking about 84 and 85.</p> <p>3 I presently don't have 87 in front of</p> <p>4 me. Please give me a moment. I will.</p> <p>5 THE SPECIAL MASTER: Yes, and just a</p> <p>6 moment. I'll do the same.</p> <p>7 That's any and all bill of materials for</p> <p>8 the backlight unit.</p> <p>9 MR. NELSON: Yes. So I think the bill</p> <p>10 of materials that I called an agglomeration of all bill</p> <p>11 of materials from, say, the gases and etches and the</p> <p>12 cleaners and everything all the way up to the pallets and</p> <p>13 the boxes, I would say that all materials don't include</p> <p>14 bill of materials of the backlight unit but it certainly</p> <p>15 is a way to hide all the information. So I guess that</p> <p>16 87 --</p> <p>17 THE SPECIAL MASTER: Well, I mean I</p>
<p>18 sufficiency of that, I think that that was bearing on</p> <p>19 all the bill of materials that we actually sought which</p> <p>20 was the bill of materials for the liquid crystal display</p> <p>21 modules.</p> <p>22 That being said, I can actually probably</p> <p>23 sift through all that information and come up with the</p> <p>24 bill of materials for the liquid crystal display modules.</p>	<p>18 guess --</p> <p>19 MR. NELSON: -- supplied with.</p> <p>20 THE SPECIAL MASTER: -- that is the old</p> <p>21 adage be careful what you ask for.</p> <p>22 MR. NELSON: Your Honor, if you look at</p> <p>23 what we did ask for -- okay. Well, if I'm going to</p> <p>24 address the merits, you are going to let me.</p>
<p>95</p> <p>1 However, the LPL status report says they produced</p> <p>2 document responses to 82, 84, 85 and 87.</p> <p>3 Your Honor, that is just not true. That</p> <p>4 is just not correct. I'm sorry. Let me take a step</p> <p>5 back. That is not correct because Document Request No.</p> <p>6 84, if you will recall from the hearing, you actually</p> <p>7 pointed out that that was actually a narrower request</p> <p>8 asking for documents sufficient to identify not only the</p> <p>9 parts of an LCD module but the structure, function and</p> <p>10 assemblage of an LCD module. And those materials may</p> <p>11 identify the parts of an LCD module but certainly do not</p> <p>12 identify the structure or the assembly of those parts.</p> <p>13 So that would be my first point.</p> <p>14 The second point would be. The second</p> <p>15 point would be 85. Their status report says that they</p> <p>16 also, their bill of materials information would be</p> <p>17 responsive to 85. 85 seeks documents sufficient to</p> <p>18 identify each part of an LCD module that can be used for</p> <p>19 mounting an LCD module. A bill of materials does not</p> <p>20 indicate anything regarding what particular structure or</p> <p>21 what particular component can be used for mounting that</p> <p>22 structure or that component or the LCD module to any</p> <p>23 other structure. So bill of materials, even assuming</p> <p>24 what they produce was the correct bill of materials, does</p>	<p>97</p> <p>1 THE SPECIAL MASTER: Yes, I will.</p> <p>2 MR. NELSON: You pointed out if I ask</p> <p>3 for the world, I'll be given a universe of information</p> <p>4 from which it's difficult to sift the relevant</p> <p>5 information. And the fact of the matter is Request For</p> <p>6 Production 82 does not ask for all bill of materials for</p> <p>7 each subset, subcomponent or part of an LCD module. It</p> <p>8 asks for the bill of materials for the final LCD module,</p> <p>9 if you have request for production in front of you.</p> <p>10 THE SPECIAL MASTER: I do. Any and all</p> <p>11 bill of materials for each LCD module made by LPL from</p> <p>12 January 1, 1997 to the present.</p> <p>13 MR. NELSON: Certainly, Your Honor. And</p> <p>14 from just a common sense perspective, that would not</p> <p>15 include the bill of materials for the boxes that store in</p> <p>16 which all the LCD modules are shipped. It would not</p> <p>17 include the foam or the pallets in which the LCD modules</p> <p>18 are shipped. That is post-production, for sure.</p> <p>19 And I submit to you, Your Honor, that</p> <p>20 that would not include the bill of materials for each</p> <p>21 subcomponent of each LCD module. In other words, the</p> <p>22 LCD is built by putting together some finite set of</p> <p>23 components and they've certainly don't use the gases, the</p> <p>24 etchings, the cleanants, the masks to make the thin film</p>



Friday, March 2, 2007

SHEET 26		98	100
1	transistors. The thin film transistors already exist in	1	that was imposed upon an agreement that was reached on
2	what we call a panel, a flat panel. That panel is,	2	December 28th, 2006. So when we're saying we accept what
3	itself, a component of the LCD module. That is how you	3	was produced in response to 82, that is based upon an
4	build the panels, not really within the bill of materials	4	agreement that cut off the document production at a
5	for each LCD module.	5	particular point that it shouldn't have been cut off.
6	That being said, Your Honor, I think I	6	THE SPECIAL MASTER: Well, I'll make
7	can probably figure out from that universe of information	7	some determination as to whether the agreement was
8	the bill of materials for the LCD module. But since are	8	breached in such a fashion that the date should be
9	you saying I have to be careful for what I ask for, I	9	obviated but I'll do that at some other point.
10	just want to point out that really they just dumped on us	10	MR. NELSON: I understand.
11	bill of materials for a tremendous assortment of steps	11	THE SPECIAL MASTER: Okay. So what I
12	that are beyond what was requested.	12	would like LPL to respond to is 84 and 85.
13	THE SPECIAL MASTER: Assume for the	13	MR. CHRISTENSON: Thank you, Your Honor.
14	moment, because I don't have that truckload of materials	14	Cass Christenson.
15	sitting here with me. First of all, what are you asking	15	THE SPECIAL MASTER: Please.
16	me to do?	16	MR. CHRISTENSON: I'll respond to this
17	MR. NELSON: I'm asking you to, since	17	issue. And I understand that you don't need for purposes
18	they're reporting that they have produced documents in	18	of your determination today a complete response for all
19	response to Document Requests 84 and 85, I'm actually	19	the points just raised. I'll make some very concise
20	willing to accept the documents they produced in response	20	points.
21	to the agreement reached which had a temporal limitation,	21	First of all, we produced a 299-page
22	the temporal limitation of December 28th, 2006. I'm	22	document that contains very detailed and complete bill of
23	willing to accept that bill of material information in	23	material information that was requested by ViewSonic and
24	response to 82. But in response to 84 and 85, we	24	may have additional information there but it certainly
		99	101
1	received nothing contrary to what they say in their	1	covers everything that ViewSonic requested.
2	status report.	2	THE SPECIAL MASTER: That is with
3	THE SPECIAL MASTER: Let's talk then	3	respect to 84 and 85?
4	about 84 and 85, please. If I may hear your response.	4	MR. CHRISTENSON: With respect to
5	There is an acceptance with response to 82, notwithstand-	5	Document Request 84, Your Honor, that is a request
6	ing the claim that you gave more than you needed. Let's	6	dealing with documents sufficient to identify the parts
7	talk about 84 and 85, please.	7	of an LCD module first and then the structure, function,
8	MR. CHRISTENSON: And, Your Honor, I	8	et cetera, of those parts. LPL is not aware of documents
9	don't know at what point you want me to respond. But I	9	specifically that addressed those issues. I think that
10	want to respond, I can assure you.	10	the 299-page document that we produced is responsive at
11	THE SPECIAL MASTER: Well, what I just	11	least in part to that request.
12	heard, there was an agreement, correct me if I'm wrong,	12	There was a discussion I believe at the
13	with respect to 82. Whether it was too broad or whether	13	hearing, I think it was at page 133 of the transcript,
14	it was appropriate, the characterization is that it was	14	where we were hoping that if there was some other more
15	too broad. I don't need to be concerned about my	15	specific type of document that was deemed to be
16	characterization of it if I've heard what I just heard,	16	responsive by you to that request, you were essentially
17	and that is they're going to work with that document,	17	going to alert us to that in a ruling but we are not
18	they're going to accept it as a bill of materials that	18	holding back documents that respond to that.
19	was covered by Document Request 82.	19	It really gets back to the point that a
20	MR. NELSON: With --	20	royalty on what its business is and what business it does
21	THE SPECIAL MASTER: So I don't need	21	not do. And many of these requests, the issue is they're
22	you -- "with" what?	22	asking us to produce information in discovery about
23	MR. NELSON: I'm sorry, Your Honor.	23	something we just don't do which is putting together a
24	With the understanding that that has a date limitation	24	finished product using a module. We make and sell the

SHEET 27 102	104
<p>1 module and then others use that module, assemble it and</p> <p>2 attach it within another finished product. So, it's</p> <p>3 really a question of what information do we have to give</p> <p>4 and we can't give what we don't have.</p> <p>5 Request 84 was a disputed request. And</p> <p>6 I don't know if, I don't think you had an opportunity</p> <p>7 yet to issue a specific ruling, although you clearly</p> <p>8 indicated at the hearing that you were going to grant</p> <p>9 that request with the date limitation that was agreed to</p> <p>10 by counsel.</p> <p>11 THE SPECIAL MASTER: That's what I said.</p> <p>12 MR. CHRISTENSON: And we are not aware</p> <p>13 of additional documents, specific documents responsive to</p> <p>14 that.</p> <p>15 THE SPECIAL MASTER: Well, if the</p> <p>16 representation is that you have given all that you have</p> <p>17 and that you are aware of, I take that representation to</p> <p>18 mean that you have done what you are required to do under</p> <p>19 the rule, determine what is responsive, produce it if it</p> <p>20 is responsive, and you are saying you don't have</p> <p>21 anything.</p> <p>22 MR. CHRISTENSON: That's true, Your</p> <p>23 Honor, although, because we haven't received a specific</p> <p>24 ruling from you, I would want to make sure. I would like</p>	<p>1 capture that. Are you ruling that --</p> <p>2 THE SPECIAL MASTER: What I understood</p> <p>3 Mr. Christenson just to say is that as far as he knows,</p> <p>4 there are no documents that have not otherwise been</p> <p>5 produced responsive to Request For Production No. 84. He</p> <p>6 also said, however, that until he understood that I've</p> <p>7 actually ordered it, he will go back to his client,</p> <p>8 re-ask if there are any documents that are responsive to</p> <p>9 Request For Production No. 84. And that is why I said I</p> <p>10 ordered it. Your transcript is the record.</p> <p>11 MR. NELSON: I appreciate that, Your</p> <p>12 Honor.</p> <p>13 I was listening very carefully to what</p> <p>14 Mt. Christenson was saying, and he basically parsed 84</p> <p>15 into two parts. One was the part of 84 that requests</p> <p>16 simply an identification of the part of an LCD module</p> <p>17 versus the rest of the request which is the structure,</p> <p>18 function and, most critically, the assemblage of those</p> <p>19 parts.</p> <p>20 THE SPECIAL MASTER: I see what it says.</p> <p>21 MR. NELSON: I know. And so, Your</p> <p>22 Honor, frankly it's very easy to see that the assemblage</p> <p>23 actually corresponds to an assembly drawing. It would</p> <p>24 never be a bill of materials, it would be an assembly</p>
103	105
<p>1 to go back to my client just to double-check and make</p> <p>2 sure that there is not anything else there to produce.</p> <p>3 THE SPECIAL MASTER: Well, let's do it</p> <p>4 this way. Rather than waiting for any written finding</p> <p>5 and recommendation with respect to 84, since we're</p> <p>6 dealing with it now, you all did forge an agreement with</p> <p>7 respect to deadline, with respect to date.</p> <p>8 MR. CHRISTENSON: Yes.</p> <p>9 THE SPECIAL MASTER: Mindful of that</p> <p>10 date, I have ordered, 84, documents sufficient to</p> <p>11 identify the parts of an LCD module, et cetera, to be</p> <p>12 produced. And I did it for the reasons that I expect I</p> <p>13 stated on the record. Consider this, the order and</p> <p>14 consider the transcript of before and now what you would</p> <p>15 need to re-ask your client and make any determination you</p> <p>16 may want to make with respect to what you need to do or</p> <p>17 not do with Judge Farnan.</p> <p>18 MR. CHRISTENSON: I'm sorry, Your Honor.</p> <p>19 Could you just say the last part?</p> <p>20 THE SPECIAL MASTER: You got my ruling</p> <p>21 and the transcript is the order, if you will.</p> <p>22 MR. CHRISTENSON: Yes, okay. I</p> <p>23 understand</p> <p>24 MR. NELSON: I'm sorry. I didn't quite</p>	<p>1 drawing.</p> <p>2 THE SPECIAL MASTER: Well, is there an</p> <p>3 assembly drawing?</p> <p>4 MR. CHRISTENSON: Your Honor, that is</p> <p>5 one of the things I can confirm. I'm not trying to avoid</p> <p>6 the request.</p> <p>7 THE SPECIAL MASTER: No, I understand</p> <p>8 that. Well, I would like that to be confirmed forthwith.</p> <p>9 MR. CHRISTENSON: We will do so, Your</p> <p>10 Honor.</p> <p>11 THE SPECIAL MASTER: Thank you.</p> <p>12 MR. NELSON: And, Your Honor?</p> <p>13 THE SPECIAL MASTER: Yes.</p> <p>14 MR. NELSON: Does your present order,</p> <p>15 it does include the date limitation that was agreed upon</p> <p>16 during the December 28th hearing; is that correct?</p> <p>17 THE SPECIAL MASTER: That's correct,</p> <p>18 unless I change it.</p> <p>19 MR. CHRISTENSON: With respect to</p> <p>20 Request 85, Your Honor, that was one that we had agreed</p> <p>21 to produce documents in response to.</p> <p>22 THE SPECIAL MASTER: Yes, as I remember</p> <p>23 it.</p> <p>24 MR. CHRISTENSON: And we have checked</p>

Friday, March 2, 2007

SHEET 28	106	108
<p>1 and we have produced the documents that we have. We've 2 produced documents regarding accused products. We've 3 produced communications with third parties concerning 4 their products that may infringe. We've produced 5 documents exchanged with a standards organization in the 6 industry. So we've produced whatever we have and we've 7 produced documents beyond the 1997 to 1998 time frame. 8 But, again, because we're not a company that puts these 9 things together or does the actual mounting, the 10 documents we have would be very limited. 11 MR. NELSON: Your Honor? 12 THE SPECIAL MASTER: Yes. 13 MR. CHRISTENSON: I do think also, bill 14 of material information that we produced is partially 15 responsive to this request as well because it addresses 16 all the parts of an LCD module, and I don't think there 17 is any dispute about that.</p>	<p>1 WUXGA TFT LCD, and the date of that specification is 2 April 6th of 2004. 3 Those are the drawings or the specs that 4 you are referring to? 5 MR. NELSON: Yes, Your Honor. And at 6 the time, our research was incomplete, but those are two 7 we were able to pull up that showed mounting features, 8 the document itself. And I'm presently going through the 9 electronic version and I'm going to direct you to some 10 pages in Exhibit 11. 11 THE SPECIAL MASTER: Just one moment. 12 Let me get back to it again. I was flipping. Go ahead. 13 MR. NELSON: If you want to stick with 14 Exhibit 12, I'm glad to stick with that one. 15 THE SPECIAL MASTER: No, either one. 16 Whatever is easiest for you. 17 MR. NELSON: The problem is --</p>	
<p>18 I would also just like to note that the 19 requests that we were served with did not relate just to 20 the final module based on they sought no material inform- 21 ation on any component and subcomponents of the module, 22 Your Honor. And this is an issue that we discussed at 23 the hearing and I said I didn't think it was relevant. 24 I didn't understand why they wanted it, but they insisted</p>	<p>18 THE SPECIAL MASTER: What page? 19 MR. NELSON: On Exhibit 11, the pages 20 would be 23 of 29, and 24 of 29. 21 THE SPECIAL MASTER: Just a moment. 22 All right. I'm looking at 23 and 29. 23 MR. NELSON: These are the type of 24 documents that we would need to be able to ask questions</p>	
107	109	
<p>1 on it and they got it. 2 MR. NELSON: May I respond, Your Honor? 3 THE SPECIAL MASTER: Sure. 4 MR. NELSON: Okay. So I understand 5 Mr. Christenson has reverted back to the bill of material 6 information but originally he was speaking to Document 7 Request No. 85. 85 is directed to documents that 8 identify each part of an LCD module that can be used for 9 mounting. So it must actually provide some information 10 about the mounting. 11 We've actually provided to Your Honor, 12 as one of our exhibits, I believe a couple product specs 13 that we had to find on our own through the Internet that 14 those product specs are LPL products. 15 THE SPECIAL MASTER: Well, let me repull 16 those. Just a moment. If I recall correctly, they are 17 television monitors and the date for the document, the 18 date at least on the bottom of the specification for 19 approval, I'm looking at Exhibit 11 to your February 16, 20 2007 motion. 21 The first product is 23.0 WXGA DFT LCD, 22 and the date of that specification is December 10, 2003. 23 The next document, which is your Exhibit 12 to that same 24 motion, is 12.0, and it does have inches after that,</p>	<p>1 during a 30(b)(6) deposition because we have, on page -- 2 I'm sorry. You're on page 23 of 29; is that correct? 3 THE SPECIAL MASTER: Yes, that's 4 correct, sir. 5 MR. NELSON: So that is a front view 6 of a module and also some side or profile views of the 7 module. And you see some user holes. On the right side 8 of the document, there is a side view and you actually 9 see the label, 150 user hole. Do you see that, Your 10 Honor? 11 THE SPECIAL MASTER: Wait just one 12 moment. 13 I do. 14 MR. NELSON: User holes are very likely 15 mounting holes and so the problem is that it may not use 16 the word "mounting" but there is actually a user hole 17 that is intended to mount the module that someone else is 18 going to mount the module. LPL makes this product, it 19 has the holes and they're right there for mounting, but 20 we can go a step further. 21 THE SPECIAL MASTER: Let me ask you this 22 question. I'm not sure where we're headed with this but 23 I'm mindful of -- just a moment, please. 24 In Mr., is it Auito, A-U-I-T-O?</p>	



SHEET 29

110

1 MR. CHRISTENSON: He is with McKenna  
2 Long & Aldridge, Your Honor.  
3 THE SPECIAL MASTER: Yes. In his  
4 correspondence to Mr. Miller dated January 9 of 2007,  
5 there is a reference. I expect it would be important  
6 to read it.  
7 This is not reading the whole paragraph  
8 there: "We have also determined that LPL sells LCD  
9 modules for televisions that have a different structure.  
10 Specifically, LPL recently has been selling LCD modules  
11 for televisions that could be used by third-party  
12 assemblers in a way that practices LPL rear-mounting  
13 technology claimed in the patents in suit, depending upon  
14 the construction of the claims and how third parties  
15 assemble finished products that incorporate LPL modules  
16 LPL will promptly search for and produce any responsive  
17 discovery. We anticipate that LPL will produce any such  
18 discovery on a rolling basis to be completed by January  
19 31, 2007."  
20 So go ahead. I'm not sure. Make your  
21 point.  
22 MR. NELSON: Well, Your Honor, they  
23 already are interpreting their way out of the document  
24 request. They're saying that they make products that

111

1 might be used by someone else in a way that infringes  
2 their patent, but that is not what our document request  
3 seeks. We seek any document -- and now we're going to go  
4 back to 85.  
5 THE SPECIAL MASTER: Well, first of all,  
6 they didn't say that they didn't infringe the patent.  
7 MR. NELSON: I'm sorry. They said that  
8 they might be used by third parties --  
9 THE SPECIAL MASTER: Correct.  
10 MR. NELSON: -- in a fashion that  
11 infringes, that might infringes the patent; is that  
12 correct?  
13 THE SPECIAL MASTER: You're asking?  
14 MR. NELSON: I don't have the letter in  
15 front of me but I'm very familiar with the letter.  
16 THE SPECIAL MASTER: Okay.  
17 MR. NELSON: They're saying they don't  
18 make rear mountable products, but the products are then  
19 used by third parties in a way that may in fact practice  
20 the invention.  
21 THE SPECIAL MASTER: That is what it  
22 says.  
23 MR. NELSON: Right, but that interprets  
24 there way right out of the document request because we're

112

1 not asking how third parties used it, used their modules,  
2 we're asking them for documents regarding how their  
3 modules can be mounted. And here we have, Your Honor,  
4 I'm trying to show you a profile of a drawing that has  
5 some user holes and I'm going to get to that point how  
6 those user holes probably are used, but they have to be  
7 fair. We have to have access to those documents so we  
8 can ask questions of their 30(b)(6) witnesses.  
9 Without the documents that are the  
10 subject of our motion, Your Honor, we can't complete our  
11 30(b)(6) deposition. I need to bring that up up front.  
12 But now if you go to the next page of  
13 that particular exhibit, we are at 23 of 29 and I pointed  
14 out a couple user holes. Was Your Honor able to see  
15 that?  
16 THE SPECIAL MASTER: I did.  
17 MR. NELSON: So I'm going to represent  
18 to you that I think, and I'm not LPL's witness but I'm  
19 pretty sure those are actually screw holes.  
20 Now if we go to the next drawing, page  
21 24 of 29, do you see the profile?  
22 THE SPECIAL MASTER: Slow down a little  
23 bit for us, please.  
24 MR. NELSON: I'm sorry.

113

1 THE SPECIAL MASTER: That's okay. I'm  
2 on 24 of 29.  
3 MR. NELSON: 24 of 29 is a rear view and  
4 again some profiles. And now, I'm not an expert at  
5 readings these drawings but if you look at the right side  
6 of the page, there is a profile. Do you see that, Your  
7 Honor?  
8 THE SPECIAL MASTER: I do.  
9 MR. NELSON: That profile has a little  
10 profusion at the upper part of the profile and there is  
11 actually a blowup of that profusion. It says section BB.  
12 Do you see that, Your Honor?  
13 THE SPECIAL MASTER: I do.  
14 MR. NELSON: So, again, we would need  
15 deposition testimony from an LPL witness regarding what  
16 that is. That looks like it's rear mountable capable.  
17 It's capable of being rear mounted. So this particular  
18 module practices side mounting and perhaps rear mounting.  
19 Okay?  
20 MR. AMBROZY: Your Honor, if I may  
21 interject? This is Re1 Ambrozy.  
22 THE SPECIAL MASTER: Yes.  
23 MR. AMBROZY: This gets to the whole  
24 crux of the issue, Your Honor. Whether something is

SHEET 30		114		116	
1 capable of being rear mounted necessarily requires that		1 mounting the housing, then talk to me about whether you		1 mounting the housing, then talk to me about whether you	
2 there be a housing.		2 agree that documents with respect to product showing that		2 agree that documents with respect to product showing that	
3 MR. NELSON: Your Honor, that --		3 fall within the appropriate scope of discovery. I think		3 fall within the appropriate scope of discovery. I think	
4 (Inaudible.)		4 I heard you say it would.		4 I heard you say it would.	
5 THE SPECIAL MASTER: Wait, wait.		5 MR. CHRISTENSON: Your Honor, this is		5 MR. CHRISTENSON: Your Honor, this is	
6 Counsel, hold on just a second. There are too many		6 Cass Christenson. I think the answer actually is that it		6 Cass Christenson. I think the answer actually is that it	
7 people talking, number one, and there is a phone ringing		7 would not. And I have a couple of points I would like to		7 would not. And I have a couple of points I would like to	
8 or there was at least in the background.		8 make on that subject.		8 make on that subject.	
9 MR. AMBROZY: That was it a distraction,		9 THE SPECIAL MASTER: Please.		9 THE SPECIAL MASTER: Please.	
10 Your Honor. In regard to the claim, it's not so much of		10 MR. CHRISTENSON: First of all, Your		10 MR. CHRISTENSON: First of all, Your	
11 a claim construction issue, Your Honor, it is specific-		11 Honor, we have just received two new sets of document		11 Honor, we have just received two new sets of document	
12 ally whether a product is covered by the patents in suit		12 requests from ViewSonic served in late February that are		12 requests from ViewSonic served in late February that are	
13 and whether the products are covered by the patents in		13 targeting LPL's modules. Most of the discovery requests		13 targeting LPL's modules. Most of the discovery requests	
14 suit requires that there be a housing and ViewSonic has		14 that were originally served by ViewSonic, including most		14 that were originally served by ViewSonic, including most	
15 taken that exact position in its Markman brief when it		15 of the requests that are before you in the February 16		15 of the requests that are before you in the February 16	
16 represented to Your Honor, and this is in your letter of		16 motion that we're talking about, are requests that are		16 motion that we're talking about, are requests that are	
17 February 23, a paragraph on February 23. ViewSonic, and		17 directed to flat panel display products, Your Honor.		17 directed to flat panel display products, Your Honor.	
18 I'll read, I'll quote from their brief:		18 And that is significant because the flat panel display		18 And that is significant because the flat panel display	
19 "At claims 35 and 55 of the '614 patent		19 product is defined by ViewSonic for discovery purposes as		19 product is defined by ViewSonic for discovery purposes as	
20 each require the rear mountable flat panel display device		20 the finished product. It's the product that is, if you		20 the finished product. It's the product that is, if you	
21 be mounted through the housing." And none of the		21 will, assembled and mounted.		21 will, assembled and mounted.	
22 products that LPL sells has a housing.		22 The discovery that they're now trying		22 The discovery that they're now trying	
23 Moreover, Mr. Aiuto's letter to		23 to shift into is discovery with respect to all of LPL's		23 to shift into is discovery with respect to all of LPL's	
24 Mr. Miller earlier specifically stated that LPL makes the		24 modules. The modules themselves do not practice the		24 modules. The modules themselves do not practice the	
115		115		117	
1 module, does not make a monitor and the module might have		1 invention and they never originally argued that they did.		1 invention and they never originally argued that they did.	
2 fastening parts on their rear surface but there is no way		2 But now they're trying to back all this discovery into		2 But now they're trying to back all this discovery into	
3 for LPL to know what OEM s do with LPL's module down the		3 the prior request under the guise that somehow this		3 the prior request under the guise that somehow this	
4 road. Although it has mounting fastening parts on the		4 invention is broad enough to cover just the module		4 invention is broad enough to cover just the module	
5 back of the module, those could actually be used to have		5 itself. And if you turn it around, Your Honor, it would		5 itself. And if you turn it around, Your Honor, it would	
6 the first frame attached to the module.		6 mean we would be looking for discovery from the defend-		6 mean we would be looking for discovery from the defend-	
7 There is no indication, and ViewSonic		7 ants for all the modules that they purchased and use		7 ants for all the modules that they purchased and use	
8 has given no evidence and no proof, although they cited		8 in their products regardless of whether the product is		8 in their products regardless of whether the product is	
9 these attachments to their brief, there is no evidence		9 ultimately assembled in a way that practices our		9 ultimately assembled in a way that practices our	
10 that any of those fastening parts on the LPL module are		10 invention.		10 invention.	
11 used to attach the housing and that's the requirement.		11 THE SPECIAL MASTER: Now, you've said		11 THE SPECIAL MASTER: Now, you've said	
12 That the fastening parts be used, as they say in their		12 that in your filing.		12 that in your filing.	
13 brief, the rear mountable flat display device be mounted		13 MR. CHRISTENSON: Right. And I'm just		13 MR. CHRISTENSON: Right. And I'm just	
14 through the housing.		14 very concerned about them now saying we want specific-		14 very concerned about them now saying we want specific-	
15 So all they have shown you is the rear		15 ations for modules in 2003 and 2004, which, by the way,		15 ations for modules in 2003 and 2004, which, by the way,	
16 surface and sometimes only a side view of modules that		16 would not be responsive to request 85 in the '97-98 time		16 would not be responsive to request 85 in the '97-98 time	
17 have some fastening or some screw holes on their back.		17 frame in any event. But what they're suggesting, and I'm		17 frame in any event. But what they're suggesting, and I'm	
18 There is absolutely nothing before Your Honor that points		18 hearing this for the first time, is that they want all		18 hearing this for the first time, is that they want all	
19 out that these fastenings are used to mount that.		19 the specifications for all of our modules with no time		19 the specifications for all of our modules with no time	
20 THE SPECIAL MASTER: Are you conceding		20 limitation, Your Honor, and they want to actually go		20 limitation, Your Honor, and they want to actually go	
21 that if it did, I mean if the drawing itself said that --		21 through those with one of our witnesses. To what end?		21 through those with one of our witnesses. To what end?	
22 and I'll adopt your language for purposes of asking the		22 It has no bearing on validity. It has no bearing on		22 It has no bearing on validity. It has no bearing on	
23 question -- if the spec specifically said that that was		23 whether the accused product infringe our patent. It has		23 whether the accused product infringe our patent. It has	
24 used, those holes were used for the specific purpose of		24 no bearing on damages. It's just a completely		24 no bearing on damages. It's just a completely	

Friday, March 2, 2007

SHEET 31 118	120
<p>1 inappropriate event from a discovery perspective.</p> <p>2 THE SPECIAL MASTER: That's what I want</p> <p>3 to turn to in terms of addressing the issue more broadly.</p> <p>4 And the questions are for counsel for ViewSonic. I have</p> <p>5 a series of questions and I expect that you are in a</p> <p>6 position to address them now.</p> <p>7 How do LPL's product specs for its own</p> <p>8 LCD modules relate to the defense of invalidity? And</p> <p>9 what is your authority for that proposition?</p> <p>10 MR. NELSON: Okay. I'm glad you</p> <p>11 asked that because there were several points made by</p> <p>12 Mr. Ambrozy and Mr. Christenson that are actually again</p> <p>13 shifting from the document request themselves to other</p> <p>14 arguments. But to respond directly to Your Honor, you</p> <p>15 asked me how --</p> <p>16 THE SPECIAL MASTER: I am going to go</p> <p>17 one at a time through the things that you have said.</p> <p>18 MR. NELSON: Right. I'll deal with the</p> <p>19 issues one at a time.</p> <p>20 THE SPECIAL MASTER: Please.</p> <p>21 MR. NELSON: The first part is their</p> <p>22 practice of the invention is relevant for invalidity.</p> <p>23 And this is, if the product spec --</p> <p>24 THE SPECIAL MASTER: I meant to say</p>	<p>1 MR. NELSON: Even if the product spec</p> <p>2 is dated after 1999, there are secondary obviousness</p> <p>3 considerations regarding the practice of the alleged</p> <p>4 invention. And so the practice of the invention in 2003</p> <p>5 is relevant under the Graham factors, and I think we</p> <p>6 cited those in Graham v John Deere. We cited in that</p> <p>7 footnote one of Ms. Mason's January 24th, 2007 letter.</p> <p>8 THE SPECIAL MASTER: January when?</p> <p>9 MR. NELSON: January 24, 2007.</p> <p>10 Secondly, one of the arguments</p> <p>11 we're going to be making is that LPL's patent is invalid</p> <p>12 because it's obvious. And one of the obviousness</p> <p>13 considerations is the success or use of the invention</p> <p>14 after the filing date. And we cannot tell whether the</p> <p>15 alleged invention is commercially successful for LPL</p> <p>16 unless we know that they're actually practicing the</p> <p>17 alleged invention. And the only way to know that is to</p> <p>18 get the documents that show they're mounting structures</p> <p>19 after the date.</p> <p>20 But I'm not done. With respect to</p> <p>21 invalidity of the patents, again going back to prior to</p> <p>22 the filing date, even variations, a variation of the</p> <p>23 alleged invention, in our perspective, that would be side</p> <p>24 mounting. Any product that practices a variation of the</p>
119	121
<p>1 invalidity. If I didn't, that's what I meant.</p> <p>2 MR. NELSON: That's okay.</p> <p>3 There is two date ranges we need to look</p> <p>4 at: the date ranges that would be prior art and the date</p> <p>5 ranges that would not be prior art. Okay? That is what</p> <p>6 happened. During the December 28th hearing, because of</p> <p>7 certain representations made by LPL, the December 28th</p> <p>8 hearing was limited to documents from 1998 backwards.</p> <p>9 So when Mr. Christenson referred to product specs from</p> <p>10 between 1997 to 1998 and then said the exhibit is 2003,</p> <p>11 he is actually going back to the agreement that was made</p> <p>12 during the December 28th hearing.</p> <p>13 Invalidity has to two aspects to it.</p> <p>14 The first is the products spec is dated prior to the</p> <p>15 effective filing date of the U.S. patents, and I think</p> <p>16 we're going to end up in a dispute regarding what is the</p> <p>17 effective filing date. But in any event, on the face</p> <p>18 of the patent, what we have is, I'm turning to it right</p> <p>19 now, we have an April 2nd, 1999 U.S. filing date and</p> <p>20 an October 23rd, 1998 foreign filing date. So if the</p> <p>21 product spec is dated prior to April 2nd, 1999, it would</p> <p>22 have to do with, it would be relevant for invalidity</p> <p>23 without any argument regarding dates.</p> <p>24 THE SPECIAL MASTER: I agree.</p>	<p>1 alleged invention is actually relevant for obviousness as</p> <p>2 well. How obvious is it to move something from the side</p> <p>3 of a module to the rear of the module? Again, that is</p> <p>4 not for me to decide, for Mr. Christenson to decide. It</p> <p>5 would be perhaps for Your Honor to decide with perhaps</p> <p>6 the help of some experts.</p> <p>7 THE SPECIAL MASTER: Right.</p> <p>8 MR. NELSON: So that is why mounting the</p> <p>9 structures that are causally related to rear mounting are</p> <p>10 also relevant for invalidity and now we're back to prior</p> <p>11 to the effective date.</p> <p>12 And then with respect to the damages,</p> <p>13 mounting structures that are variations to the rear</p> <p>14 mountable are relevant for design alternatives. So if</p> <p>15 there is an alternative design that can be used, that</p> <p>16 would greatly reduce the value of the alleged invention.</p> <p>17 So you see, Your Honor, there is no way</p> <p>18 to limit this to documents dated prior to the effective</p> <p>19 filing date.</p> <p>20 MR. CHRISTENSON: Your Honor, if I may</p> <p>21 respond?</p> <p>22 THE SPECIAL MASTER: The only thing I</p> <p>23 don't have in front of me, and I apologize for not having</p> <p>24 it here, is the January 29 correspondence from Ms. Mason.</p>

SHEET 32 122	124
<p>1 I mean I have it but I don't have it.</p> <p>2 MR. NELSON: January 24th, Your Honor.</p> <p>3 THE SPECIAL MASTER: January 24th,</p> <p>4 right. I don't have that, I don't think.</p> <p>5 MR. CHRISTENSON: Your Honor, those</p> <p>6 were supplemental submissions made the same date by</p> <p>7 both ViewSonic and LPL and an issue addressed there was</p> <p>8 whether ViewSonic should be able to undo the agreement</p> <p>9 and seek a discovery for a broader time frame on Requests</p> <p>10 71 through 74 and 118. And then they've essentially,</p> <p>11 since that time, continuously added on to that list and</p> <p>12 sought additional discovery.</p> <p>13 THE SPECIAL MASTER: Right.</p> <p>14 MR. NELSON: Right. One last</p> <p>15 relevancy factor is that the documents both pre-filing</p> <p>16 or post-filing are relevant under the Georgia-Pacific</p> <p>17 factors. I would cite not only the Factors 8, 10 and 12</p> <p>18 cited by Ms. Mason in her January 24th, 2007 submission</p> <p>19 but also Factors 9 and 11.</p> <p>20 THE SPECIAL MASTER: Okay.</p> <p>21 MR. CHRISTENSON: Your Honor, if I may</p> <p>22 respond?</p> <p>23 THE SPECIAL MASTER: Yes.</p> <p>24 MR. CHRISTENSON: This is Cass</p>	<p>1 from a legal standpoint and what is the proper scope of</p> <p>2 discovery for validity purposes. We reached a very</p> <p>3 common sense agreement that the time frame should be to</p> <p>4 the end of 1998.</p> <p>5 THE SPECIAL MASTER: Well, I have the</p> <p>6 transcript in front of me. It certainly was my</p> <p>7 recollection of the transcript that that is what was</p> <p>8 done. In fact, that is what it says.</p> <p>9 MR. CHRISTENSON: Now, almost 50</p> <p>10 pages later in the transcript, Your Honor, at page 165,</p> <p>11 there was, long after that agreement had been made for</p> <p>12 completely separate purposes, the discussion arose as</p> <p>13 to whether or not LPL practices its invention and</p> <p>14 Mr. Ambrozy discussed whether LPL has any products that</p> <p>15 would have rear surface holes. And at that point, this</p> <p>16 is where this confusion arose because Mr. Miller started</p> <p>17 to equate subtly the idea for the first time that prac-</p> <p>18 ticing our invention could be the same thing as having a</p> <p>19 module with some holes in the back of it. And even under</p> <p>20 that approach, if we didn't have any module holes in the</p> <p>21 back, then even under that idea we wouldn't practice the</p> <p>22 invention.</p> <p>23 It turns out there are modules that have</p> <p>24 holes in the back. We don't know of instances where</p>
123	125
<p>1 Christenson. First of all, I need to address the issue</p> <p>2 of this continued assertion that we somehow made some</p> <p>3 sort of a misrepresentation and also the idea that this</p> <p>4 purported misrepresentation related to our date limit-</p> <p>5 ation agreement. The transcript, in just looking at the</p> <p>6 transcript, I think rebuts that.</p> <p>7 THE SPECIAL MASTER: Direct me to the</p> <p>8 transcript, please.</p> <p>9 MR. CHRISTENSON: The agreement, Your</p> <p>10 Honor, where we discussed the time frame limitation was</p> <p>11 at pages 120 to approximately 123 of the December 28th</p> <p>12 transcript.</p> <p>13 THE SPECIAL MASTER: I have that.</p> <p>14 MR. CHRISTENSON: And if Your Honor</p> <p>15 recalls, we were discussing the reasons why they wanted</p> <p>16 discovery with respect to some of these requests. And</p> <p>17 again, as now, we were arguing then these are related</p> <p>18 to validity and Mr. Miller conceded at that time that</p> <p>19 because, by its very nature, a validity defense calls</p> <p>20 into question a specific time frame and so it would have</p> <p>21 to be a time frame that would have been an early time</p> <p>22 frame. And we went through that in detail and this is</p> <p>23 before we got into any representations about whether we</p> <p>24 practiced the invention. We were just focusing on this</p>	<p>1 those have actually been used to mount those holes in</p> <p>2 the rear, but in any event that does not practice the</p> <p>3 invention and that is important because the discovery</p> <p>4 requests are focused on what products LPL has or what</p> <p>5 discovery it has about actually practicing the invention</p> <p>6 and/or about finished flat panel display products.</p> <p>7 MR. NELSON: Okay. Your Honor, we're</p> <p>8 back --</p> <p>9 THE SPECIAL MASTER: Wait just a moment.</p> <p>10 Go ahead, Mr. Christenson.</p> <p>11 MR. CHRISTENSON: And so we don't have</p> <p>12 that type of discovery, Your Honor. And with respect to</p> <p>13 the point that Mr. Nelson made about asking questions at</p> <p>14 a deposition, they can ask questions about obviousness.</p> <p>15 They can ask questions about design alternatives. Having</p> <p>16 all the specifications or technical documents for every</p> <p>17 one of LPL's modules is not going to advance that cause,</p> <p>18 and they don't need it for that purpose. Whether or not</p> <p>19 it was obvious to create the invention that we ultimately</p> <p>20 obtain a patent for does not depend upon what module</p> <p>21 specification LPL has for last year or two years ago or</p> <p>22 some other irrelevant time period, Your Honor.</p> <p>23 THE SPECIAL MASTER: Are there any other</p> <p>24 comments, please?</p>



SHEET 33 126	128
<p>1 MR. NELSON: Yes. I think we're far 2 from done on this. Are we actually -- I'm confused 3 whether we're arguing about the December 28 hearing or 4 actually about the present motion that ViewSonic filed. 5 THE SPECIAL MASTER: Well, I think it's 6 both. I think Mr. Christenson was wanting me to go back 7 and frame it a little bit differently because of the way 8 of the conversation that I had and that you all had with 9 respect to the issue of obviousness. 10 MR. NELSON: Okay. With respect to the 11 proceedings during December 28th, where Mr. Miller made 12 an agreement and then Mr. Christenson said there was 13 nothing about any representations until after that 14 agreement was made is incorrect. The representations 15 that were made started in September 2006, Your Honor, and 16 there is reference to those representations earlier in 17 the transcript. And I'm looking for them right now. 18 THE SPECIAL MASTER: Take your time. 19 Just a moment. 20 (Pause.) 21 THE SPECIAL MASTER: Did you find it? 22 Have you found it? 23 MR. NELSON: Yes, sir. I'm looking at 24 page 107, lines 20 through 24, where what you have there,</p>	<p>1 not correct. 2 THE SPECIAL MASTER: Okay. 3 MR. NELSON: The second part being that 4 the validity considerations are only limited to products 5 that are made prior to the filing date, that also is an 6 incorrect statement of the law, Your Honor. That is an 7 incorrect statement of the law. And, furthermore, we're 8 not seeking it solely for invalidity, we're also seeking 9 it for purposes of evaluating the damages, so I don't 10 think we are limited to documents dated January 1998 and 11 before. 12 And I want to say one other thing. We 13 heard several times from Mr. Ambrozy and from 14 Mr. Christenson that our document requests are directed 15 to the claims, and some of them are, but when we started 16 this discussion, Your Honor, we started with 85. And if 17 you look at Document Request No. 85, it actually talks 18 about how you can use a particular structure to mount 19 the LCD module to an external case. It's not how it is 20 mounted, it's how it can be used to identify the part 21 that can be used for mounting, which led us to some 22 exhibits which we had submitted and we weren't finished 23 with reviewing those exhibits. 24 THE SPECIAL MASTER: And let me ask you</p>
127	129
<p>1 Your Honor, is -- 2 THE SPECIAL MASTER: Wait just a moment. 3 (Pause.) 4 THE SPECIAL MASTER: I'm at page 107, 5 line 20. 6 MR. NELSON: Through 24. And you see 7 there where there was a reliance on the prior 8 representation of LPL. 9 THE SPECIAL MASTER: This is the 28th? 10 MR. NELSON: Yes. 11 THE SPECIAL MASTER: Page 107? 12 MR. NELSON: Yes. 13 THE SPECIAL MASTER: Line 24, "They have 14 taken the position." 15 MR. NELSON: Yes, "They have taken the 16 position they don't produce the products that apply the 17 technologies of the patents in suit." So Mr. Christenson 18 said the agreement that was reached with Mr. Miller had 19 nothing to do with the representations regarding whether 20 or not LPL practiced the alleged invention. That is the 21 context. That representation had already been made 22 months earlier so that is in the back of Mr. Miller's 23 mind the whole time, so for people to say that date 24 agreement had nothing to do with that representation is</p>	<p>1 to be a little bit more specific from your perspective on 2 how products made after a patent issues speak to 3 obviousness. 4 MR. NELSON: Okay. If a product, if 5 an alleged invention is novel, it's expected to have a 6 great deal -- it's expected to have commercial success. 7 And so that is an examination after the filing date, 8 commercial success or not of the alleged invention. And 9 so if a product does not have the alleged -- in other 10 words, if something is revolutionary, one would expect 11 it to have quite a bit of commercial success. If 12 something is not so revolutionary, after the filing date 13 you would determine whether it had that tremendous 14 commercial success. The lack of commercial success is a 15 secondary indicia of obviousness. The only way you can 16 tell whether they're having commercial success or not is 17 to look at the actual module, the module being sold by 18 LPL where the holes are for mounting. 19 MR. AMBROZY: Your Honor, Rel Ambrozy. 20 THE SPECIAL MASTER: No, he wasn't 21 finished. 22 MR. AMBROZY: I'm sorry. 23 MR. NELSON: So in comparison of the 24 commercial success of that product, you have to have a</p>



SHEET 34	130	132
<p>1 reference point. What was the reference point? You have 2 to know whether the commercial success of rear mounting 3 is real. In other words, if they say here, I'm going to 4 give you, Manuel, or ViewSonic, I'm going to give you 5 just the documents that relate to rear mountable products 6 and here is our economic information, that there is no 7 other reference points. 8 We need to know whether the products 9 practice side mounting, whether the products practice 10 front mounting, and we get to compare the actual commer- 11 cial success of all three of those. That is the only way 12 to measure the commercial success of rear mounting, and 13 that is the secondary indicia of obviousness. 14 THE SPECIAL MASTER: Okay. 15 MR NELSON: Okay? 16 THE SPECIAL MASTER: Yes. 17 MR. NELSON: That is plays into damages. 18 It's difficult to parse them you'll see that they overlap 19 if you look at the Georgia-Pacific factors 8, 9, 10, 11 20 and 12 which are all related to reasonable royalty 21 factors. Again, it's post-filing date. 22 THE SPECIAL MASTER: Oh, I understand 23 that. 24 MR. NELSON: Okay. So the secondary</p>	<p>1 have fastening parts. There is no evidence that 2 Mr. Nelson can point to that those fastening parts are 3 used to mount to a housing. They could be used to mount 4 to the first frame. They could be used to mount the 5 bracket. There is no evidence in front of us right now 6 that LPL module practices the invention. 7 MR. NELSON: May I please respond to 8 that, Your Honor? 9 THE SPECIAL MASTER: Yes, you may. And 10 I expect that once that is done that your record with 11 respect to this part of the issue is complete. 12 MR. NELSON: I'm not so sure about that 13 either. 14 THE SPECIAL MASTER: Oh, sure, but go 15 ahead. 16 MR. NELSON: With respect to 17 practicing the invention, that begs the question of 18 claim construction. 19 THE SPECIAL MASTER: Well, that is what 20 I was going to ask you. 21 MR. NELSON: So LPL is assuming that 22 they've won their claim construction and so it would be 23 capable of being mounted is all that is needed in terms 24 of this commercial success, but let's go back to the</p>	
<p>1 indicia of obviousness does deal with material that is 2 after the filing date of the patents. 3 MR. AMBROZY: Your Honor, if I may? 4 THE SPECIAL MASTER: Yes, please. And I 5 want you to tell me whether you are finished making your 6 record. I won't make a ruling today, but I will likely 7 come back to you on Monday and actually issue a ruling 8 with respect to this motion; but keep going, please. 9 MR. AMBROZY: Your Honor, as you can 10 tell throughout Mr. Nelson's discussion that he just 11 ended, he continuously references whether the inventions 12 are covered by the patents in suit. And, you know, he 13 talks about the invention. Well, what is the invention? 14 The invention is not a module. The invention is a flat 15 panel display device that has fastening parts that are 16 mounted to a housing or being an capable of mounting to a 17 housing, that requires a housing that requires a first 18 frame that requires fastening parts. 19 And if you are going to measure second- 20 ary considerations, he keeps saying to me he measures the 21 value of the invention. Well, the invention necessarily 22 requires the housing. The invention necessarily requires 23 that first frame. And as we've been continuously telling 24 this Court, we, LPL makes modules only. Those modules</p>	<p>1 request for production again, Your Honor. No. 85 does 2 not talk about -- 3 THE SPECIAL MASTER: I have it in front 4 of me again. 5 MR. NELSON: It talks about the part of 6 the module that can be used for mounting LCD modules. 7 It's not about the claims, it's actually quite specific 8 And really I have to go through a quite a few document 9 requests because I have a sense here you don't view this 10 request too kindly right now because we are asking for a 11 lot of materials. 12 THE SPECIAL MASTER: Oh, I don't want 13 you to take my questions to mean anything other than I 14 want you to make a full record so that when I make my 15 judgment, Judge Farnan will have the benefit of your view 16 and ultimately my recommendation. 17 MR. NELSON: Okay. I understand that. 18 So when we look at the product spec, and I don't care if 19 we're on Exhibits 11 or 12 that we submitted to you, and 20 that happens to be what we had at that time. Since that 21 time, Your Honor, we've actually been able to find 100 22 product specs. They actually are talking about a first 23 frame, talking about fastening the module to a first 24 frame. They're assuming that they're going to win on the</p>	

Friday, March 2, 2007

<p>SHEET 35</p> <p>134</p> <p>1 first frame argument. They're assuming that the first  2 frame actually is not in the product spec right there.  3 Can you look at that? Could you tell me  4 if you have one of those exhibits in front of you?  5 THE SPECIAL MASTER: The ones we were  6 talking about?  7 MR. NELSON: Yes.  8 THE SPECIAL MASTER: Yes, I do. Tell me  9 which one.  10 MR. NELSON: Why don't we do 11.  11 THE SPECIAL MASTER: I'm on 11.  12 MR. NELSON: Why don't we go to again  13 the same two pages, 23 of 29 and 24 of 29.  14 THE SPECIAL MASTER: I'm at 23.  15 MR. NELSON: It's difficult to see from  16 this particular drawing, Your Honor, but if you're on 23,  17 this is a front view so that you are looking at the  18 viewable side. The viewable side of the module. If you  19 look at the profile here, you will actually get an idea  20 of a frame actually around the module. It's in the  21 profile there and that, in our mind, is actually the  22 first frame. That is the first frame and it is part  23 of the module, and so when they talk about fastening  24 elements --</p>	<p>136</p> <p>1 not part of the edge.  2 THE SPECIAL MASTER: Well, you are going  3 to have to help me with it a bit.  4 MR. NELSON: That's difficult to do.  5 THE SPECIAL MASTER: I understand that.  6 But I can try.  7 MR. NELSON: You see a profile view.  8 And let me submit to you, perhaps on the other side, on  9 the left side, what you see looks like almost a very long  10 thin U, turned sideways.  11 THE SPECIAL MASTER: Yes.  12 MR. NELSON: Yes, that would be --  13 again, you would have to actually ask questions of the  14 LPL designee or get assembly drawings that would show  15 this more clearly. That is the first frame. The U part,  16 the side, the edge of it is actually the second frame.  17 THE SPECIAL MASTER: The side being?  18 MR. NELSON: The side being the part  19 with the holes, on this view, on this front view. The  20 edge. Excuse me. Let's use the word edge. Let me use  21 the words front, rear and edge and edge meaning left  22 edge, right edge, top edge, bottom edge.  23 THE SPECIAL MASTER: Okay.  24 MR. NELSON: So here, where you saw the</p>
<p>135</p> <p>1 THE SPECIAL MASTER: Go back to what you  2 just said. And, again, please slow down for me.  3 MR. NELSON: Okay.  4 THE SPECIAL MASTER: I mean I understand  5 this is the front view. I understand that I'm looking at  6 the display, if you will.  7 MR. NELSON: Right. And if you look at  8 the profile views; and why don't we look at the same part  9 that had the user holes, Your Honor.  10 THE SPECIAL MASTER: I see. That would  11 be at the top or the left side.  12 MR. NELSON: The left side and then the  13 right side.  14 THE SPECIAL MASTER: Left side and right  15 side user holes are designated 150, 200 and 150.  16 MR. NELSON: Right. SO those user holes  17 are what we think are in the second frame and then the  18 back, you see there is a little lip. There is actually  19 a back portion. It's hard to see in the drawing. But  20 there's actually the first frame where the fastening  21 elements on the rear surface are displayed there, too.  22 It's difficult to see. You see where on the profile, it  23 ends at the top. It ends at the top, and there is a  24 piece that is clearly not part of that side frame. It's</p>	<p>137</p> <p>1 user holes, those are on the edge, but on the left side  2 of this drawing, this is a long elongated U-shaped thing.  3 And I'm going to submit to you that is actually a first  4 frame. It's behind the module. It's a profile view.  5 It's a cutout of the profile view. It's behind the  6 module, Your Honor.  7 THE SPECIAL MASTER: I see.  8 (Inaudible.)  9 MR. NELSON: I'm not done. I'm not  10 done.  11 THE SPECIAL MASTER: Wait a minute.  12 MR. NELSON: I'm not done, counsel.  13 MR. CHRISTENSON: For clarification  14 only, I'm trying to figure out what you are calling the  15 U.  16 THE SPECIAL MASTER: The U as I see it  17 is on the left edge. It looks like, it looks like a  18 window squeegee.  19 MR. NELSON: Yes, that's right. There  20 are actually two frames there. It's very hard to see  21 there, but there are two pieces of material there and  22 it's difficult to see.  23 THE SPECIAL MASTER: I see. I mean I  24 think I understand what you are saying.</p>

SHEET 36 138	140
<p>1 MR. NELSON: Now, let me go to the next 2 page, Your Honor. The next page is 24 of 29. 3 THE SPECIAL MASTER: Yes, I'm there. 4 MR. NELSON: Now we're looking at the 5 rearview. This is the rear surface, what I'm going to 6 claim is the first frame. But again, it depends upon 7 claim construction, but there is no reason for discovery 8 to be stopped because LPL decides what the claim means or 9 because I decide. This can lead to the discovery of 10 admissible evidence. That is the standard under Rule 26. 11 THE SPECIAL MASTER: It is. 12 MR. NELSON: We have the right to 13 this discovery, and they have stiff-armed us from the 14 beginning of this case. And, yes, I have some emotion 15 in my voice because it's really been a contentious case. 16 This particular first frame, Your Honor, when I was 17 interrupted before, I had shown you the little portion on 18 the right that said Section BB. I had shown you that 19 actually shows a little protrusion that is probably a 20 screw hole. Do you recall that, Your Honor? 21 THE SPECIAL MASTER: Yes, I'm looking at 22 it again. I circled it. 23 MR. NELSON: Okay. If you go down below 24 that, there is the detail C. Do you see that, detail of</p>	<p>1 are several B mounting holes in the details in B. And I 2 submit to you, Your Honor, that that is flat surface 3 there. 4 THE SPECIAL MASTER: Let me look at B 5 again, please. And I want to see the detail of B. 6 MR. NELSON: Is that a question for me, 7 Your Honor? 8 THE SPECIAL MASTER: No, I'm talking to 9 myself. 10 (Pause.) 11 THE SPECIAL MASTER: Counsel, what I 12 expect, I'm seeing two Bs. Is that on either side of the 13 top C? 14 MR. NELSON: What is showing, Your 15 Honor, that those two Bs with arrows there -- 16 THE SPECIAL MASTER: Yes, I see those. 17 MR. NELSON: -- what that is telling the 18 reader, that is telling the reader there is going to be a 19 cross-reference drawing of that portion and that is what 20 Section BB is. 21 THE SPECIAL MASTER: I see. 22 MR. NELSON: You see, there is a 23 relationship between C and B, they're actually the same 24 in sync. Am I making sense there?</p>
139	141
<p>1 C? 2 THE SPECIAL MASTER: I do. 3 MR. NELSON: That M3 machine, that is 4 actually, again, a mechanical engineer would understand 5 that. That is actually a screw designation, a screw hole 6 designation, and a M3 machine screw is going to go into 7 that hole. So that is another mounting hole. 8 And if you see this blowup of C, you now 9 go to the -- actually, if you move to the left, you will 10 see that C is circled a couple times. Do you see that? 11 THE SPECIAL MASTER: C is circled a 12 couple times. Yes. 13 MR. NELSON: You actually have to find 14 the reference C. Let me actually -- 15 THE SPECIAL MASTER: Wait just a second. 16 MR. NELSON: There are actually four 17 items on the rear surface there that are designated C. 18 THE SPECIAL MASTER: I see them. 19 MR. NELSON: There are four. 20 THE SPECIAL MASTER: I see them. And 21 the detail is -- 22 MR. NELSON: -- is C. 23 THE SPECIAL MASTER: Yes, I see it. 24 MR. NELSON: And the same with B. There</p>	<p>1 THE SPECIAL MASTER: I understand what 2 you are saying. 3 MR. NELSON: So they're providing detail 4 of C provides a different aspect of that screw hole C. 5 The Section BB is a section slice or section drawing of 6 C. 7 THE SPECIAL MASTER: Okay. 8 MR. AMBROZY: Your Honor, if I may? 9 It's Rel Ambrozy. 10 MR. NELSON: I'm not done yet, 11 Mr Ambrozy. 12 THE SPECIAL MASTER: Just a moment. 13 Okay. Go ahead, sir. 14 MR. NELSON: Okay. At the back of this 15 product spec, Your Honor ... 16 THE SPECIAL MASTER: What page? 17 MR. NELSON: I'm going to direct you to 18 page 28 of 29. 19 THE SPECIAL MASTER: Okay. 20 MR. NELSON: 9-1, mounting precautions. 21 They sell this module and they're selling it to customers 22 to be mounted. There is absolutely no doubt it must be 23 mounted somewhere to be used. And 9-1(1), you must mount 24 module using holes arranged in four corners or four</p>

SHEET 37	142	144
<p>1 sides. If Your Honor recalls, I showed you the word user</p> <p>2 holes but there was no clear indication in the drawing</p> <p>3 that those user holes were mounting holes. That I think</p> <p>4 this seals the deal. The side holes are actually the</p> <p>5 mounting holes and the rear holes are also mounting</p> <p>6 holes.</p> <p>7 THE SPECIAL MASTER: Okay.</p> <p>8 MR. NELSON: Okay?</p> <p>9 THE SPECIAL MASTER: Yes.</p> <p>10 MR. NELSON: So my point is, Your Honor,</p> <p>11 this is stuff we had to fight for to get ourselves</p> <p>12 through the research on the Internet. They have these</p> <p>13 documents and we want them. The fact of the matter is we</p> <p>14 want the assembly drawings because that will eliminate</p> <p>15 any doubt what is the first frame.</p> <p>16 And there are also some problems that</p> <p>17 are occurring during the 30(b)(6) deposition of LPL. We</p> <p>18 actually presented the witness with some of their own</p> <p>19 specs and they decided they weren't able to determine</p> <p>20 some of the other structural features that are actually</p> <p>21 at issue with respect to the claim and they said that the</p> <p>22 details of these product specs weren't sufficient. So we</p> <p>23 need the assembly drawings.</p> <p>24 And, Your Honor, I actually I want to</p>	<p>1 invention are relevant for invalidity if they're prior to</p> <p>2 the effective filing date because they may be obvious to</p> <p>3 the alleged invention and items that don't practice the</p> <p>4 invention are relative to damages if it's after the</p> <p>5 effective date as legitimate design alternatives.</p> <p>6 THE SPECIAL MASTER: Well, you've made</p> <p>7 your record. And if you want to be supplementing the</p> <p>8 January 24 correspondence --</p> <p>9 MR. NELSON: I don't really feel</p> <p>10 compelled if those five factors I highlighted are clear.</p> <p>11 THE SPECIAL MASTER: I understand your</p> <p>12 position and you will have my view once we get through</p> <p>13 this record at the Monday hearing.</p> <p>14 MR. NELSON: Then to cut to the chase,</p> <p>15 instead of going through all the requests for production</p> <p>16 that I believe call for products specs and assembly draw-</p> <p>17 ings, and, you see, Your Honor, I've tried to be a little</p> <p>18 more narrow now because I realize we're at the end of</p> <p>19 the case and ViewSonic is extremely prejudiced because we</p> <p>20 actually had five days or four days with an LPL designee</p> <p>21 and we didn't have any of this information available to</p> <p>22 question him so that prejudiced ViewSonic tremendously</p> <p>23 and I foresee we're going to get dumped on.</p> <p>24 We identified at least 300 LPL products,</p>	
143	145	
<p>1 make sure, if you aren't, how shall I say it, if you are</p> <p>2 not convinced that documents that are post-filing date,</p> <p>3 after the filing date, if you are not convinced documents</p> <p>4 that were generated after the filing date of this, of</p> <p>5 the patents in suit are relevant, I would like the</p> <p>6 opportunity to supplement that briefing.</p> <p>7 THE SPECIAL MASTER: No, you provided</p> <p>8 me with your position and you provided me with case</p> <p>9 reference as it relates to the issue of obviousness. I</p> <p>10 certainly understand what you are suggesting as it</p> <p>11 relates to commercial success and damages. And what I</p> <p>12 will do is I'll want to revisit some of those between now</p> <p>13 and Monday. If you see the need to supplement, you are</p> <p>14 going to have to do it quickly.</p> <p>15 MR. NELSON: Okay. Because really I'm</p> <p>16 looking at the items that practice the invention deal</p> <p>17 with invalidity if it's prior.</p> <p>18 THE SPECIAL MASTER: Right, I understand</p> <p>19 that.</p> <p>20 MR. NELSON: Invalidity is after the</p> <p>21 filing date because of the secondary obviousness</p> <p>22 consideration and damages regarding the Georgia-Pacific</p> <p>23 factors. Items that don't practice the invention,</p> <p>24 drawings and product specs that don't practice the</p>	<p>1 maybe it will be more than that, I don't know. But for</p> <p>2 us to have to sift through all of this information with</p> <p>3 what little time is left is tremendous prejudice, but we</p> <p>4 want the information or otherwise we're going to be</p> <p>5 seeking preclusion but that is for another day.</p> <p>6 THE SPECIAL MASTER: I understand that.</p> <p>7 MR. NELSON: But what I really want to</p> <p>8 make sure I'm making clear we seek, we seek the product</p> <p>9 specs, the product specs for all of their products.</p> <p>10 Because some of the drawings I was provided, we had to</p> <p>11 get those off the Internet. They have all of the product</p> <p>12 specs for all of their products since 1977.</p> <p>13 Number two, I want the assembly drawings</p> <p>14 because I don't want any dispute from LPL regarding</p> <p>15 whether or not the product actually shows what we needed</p> <p>16 it to show. It clearly shows mounting holes, in our</p> <p>17 opinion, although the designee may not agree with me and</p> <p>18 we want to eliminate any disputes from LPL-designated</p> <p>19 witness.</p> <p>20 We also want all documents relating to</p> <p>21 the instructions, all mounting and fixing and attaching</p> <p>22 that LCD module -- the LCD modules they make -- all the</p> <p>23 instructions they give to customers how to attach to any</p> <p>24 of structure, whether it be a housing or a case or a</p>	



<p>SHEET 38</p> <p>146</p> <p>1 computer or a laptop or a monitor. It doesn't matter 2 because that is all relevant. 3 And so we want all documents relating 4 to any instruction that they give to their customer 5 regarding, mounting, affixing, attaching an LCD module. 6 And then last but not least, in fact, 7 probably the one they're going to resist the most, we 8 want samples, Your Honor. Just like they seek them from 9 us, we want samples. Now, if you would like me to just 10 run through? 11 THE SPECIAL MASTER: I want you to talk 12 about samples for a moment. 13 MR. NELSON: Okay. 14 THE SPECIAL MASTER: Why don't you tell 15 me what you mean in terms of samples. 16 MR. CHRISTENSON: Your Honor, I 17 apologize for interrupting. Cass Christenson. 18 THE SPECIAL MASTER: Yes. 19 MR. CHRISTENSON: I'm sort of losing 20 track here of all the things we're going to have to 21 respond to. I would respectfully request we be permitted 22 to respond to some of what was just said before we get 23 into samples as a new issue. 24 THE SPECIAL MASTER: All right. Sure.</p>	<p>148</p> <p>1 THE SPECIAL MASTER: Yes. 2 (Inaudible.) 3 THE SPECIAL MASTER: Counsel, just a 4 moment. I tuned you out, and that's not a good thing. 5 I don't usually do that but I can't listen to more than 6 one voice at a time. So I was paying attention to 7 Mr. Christenson and I intend to continue to do that 8 without interruption. 9 MR. NELSON: I apologize to all of you. 10 MR. CHRISTENSON: Thank you, Your Honor. 11 So if monitor specifications are 12 appropriate discovery, and I submit, Your Honor, they are 13 not appropriate discovery, then that is discovery that 14 needs to be produced by all parties and all parties have 15 in their possession, custody and control discovery con- 16 cerning modules and module specifications. But that is 17 discovery that would take tremendous effort and burden to 18 produce as again we saw when it took months to get the 19 discovery from the defendants, their relevant product 20 specification. If we look back at Request 85. 21 THE SPECIAL MASTER: Well, I was just 22 going to go back to that a minute, as you were speaking. 23 Just a moment. 24 MR. CHRISTENSON: Thank you.</p>
<p>147</p> <p>1 Then let's bite it off for samples. 2 MR. CHRISTENSON: With respect to the 3 product specifications for all of LPL's modules, as I 4 understand Mr. Nelson, they are now seeking every 5 specification for every LPL module which he counts as 6 well above 300 products. And that is probably a very 7 conservative number. I would point out to Your Honor it 8 took us many, many months, a process that continues, for 9 us to get specifications from the defendants for their 10 products. 11 As of right now, none of the defendants, 12 Your Honor, has produced any specifications for any of 13 the modules that they use in their products. So if this 14 is such important discovery, it is clearly a two-way 15 street, Your Honor. 16 MR. NELSON: Your Honor, we don't make 17 modules. That has been clear to Mr. Christenson and 18 Mr. Ambrozy since Day One. We don't make modules. We 19 actually just sell the product. 20 MR. CHRISTENSON: Your Honor, if I may 21 finish? 22 THE SPECIAL MASTER: Yes. 23 MR. CHRISTENSON: Mr. Nelson, please let 24 us finish.</p>	<p>149</p> <p>1 THE SPECIAL MASTER: And the way I'm 2 going back to it, I'm not going back to the raw request, 3 I'm going back to the request as it appears in the 4 February 16th submittal so it's not the raw request. Go 5 ahead, please. 6 MR. CHRISTENSON: Yes, thank you. The 7 request, Your Honor, is a very limited request on its 8 face. It's a request that talks about what parts might 9 be relevant to mounting with respect to an LCD module. 10 It's not a request as Mr. Nelson implied that would call 11 for us to produce in response, Exhibit 11, Exhibit 12 or 12 hundreds of other module specifications. That is far 13 afield, Your Honor. And I would also point out, looking 14 back at Exhibits 11 and 12 and not spending more time 15 because I don't think it's necessary to do so, you have 16 exhibits, but I would just submit respectfully that us 17 producing hundreds of specifications similar to Exhibits 18 11 and 12 would make no progress in this case with 19 respect to obviousness issues and would do nothing to 20 advance the records with respect to damages issues. 21 The supplemental submissions of January 22 24 where ViewSonic argues that they needed further 23 discovery with respect to damages, they pointed to three 24 Georgia-Pacific factors, Your Honor. Those factors focus</p>



Friday, March 2, 2007

SHEET 39 150	152
<p>1 on the use of the invention and the profitability 2 associated with that use or that invention. 3 THE SPECIAL MASTER: Right. 4 MR. CHRISTENSON: We discussed, Your 5 Honor, that we don't make or use the invention, we make 6 modules and the modules are not the invention. But in 7 any event, in good faith, as we pointed out in our 8 January 24th submission to Your Honor, we have provided 9 and created a list of modules that have holes at the back 10 of the modules and we have also provided sale summaries 11 for all of LPL's modules all the way through the end of 12 2006 and if they want to try to make some sort of an 13 argument that some sales of some modules are somehow 14 relevant to damages, they have what they need to make 15 those arguments. 16 But I also pointed out in our submission 17 to you in our submission of January 24 that the hypothet- 18 ical negotiation under Georgia-Pacific takes place at the 19 time of the first infringement, so we're get back to the 20 2002 and earlier time period, not this wide open all 21 products made by LPL time period that we're now talking 22 about. 23 So I wanted to make sure that we were 24 able to address those points before we moved into any new</p>	<p>1 construction. Both LPL and ViewSonic take the position 2 that the housing is a required limitation and required 3 element in the infringing device. LPL doesn't make a 4 product with a housing. Therefore, I think it is all 5 moot. 6 MR. NELSON: Your Honor? 7 THE SPECIAL MASTER: I think it was Mr. 8 Nelson suggested -- 9 MR. NELSON: Your Honor, may I please 10 respond to that? 11 THE SPECIAL MASTER: Well, let me tell 12 you what I think you said without my going back with a 13 fine tooth comb now and looking at the drawings. I'll 14 probably need the transcript to help me review that 15 again. 16 Mr. Nelson said in his presentation as 17 he walked through the spec that he identified something 18 that he would call a housing. Did you not, sir? 19 MR. NELSON: A frame. 20 THE SPECIAL MASTER: A frame. 21 MR. NELSON: A frame. And, Your Honor, 22 they are now citing our claim construction basis. And 23 let me, with kind of tongue in cheek, just say if LPL is 24 willing to concede that Viewsonic's claim construction is</p>
151	153
<p>1 subjects. 2 THE SPECIAL MASTER: Okay. Thank you. 3 MR. CHRISTENSON: If I may, I'll be very 4 quick. 5 I think it's ironic that ViewSonic is 6 now requesting documents they forced LPL to go to great 7 lengths to get to the point where now Your Honor has 8 ordered they obtain them from the OEMs, but what is also 9 important to note is that ViewSonic has not bought any of 10 these monitors to match up to the specifications that 11 they put before Your Honor in Exhibit No. 11 and No. 12. 12 If they did, I'm sure they would find that the holes that 13 they're calling mounting holes are used to mount to 14 something other than the housing. 15 And although Your Honor did allude to 16 the fact that some of this does come down to claim 17 construction, I would point out to Your Honor again in 18 our February 23rd letter, we cite from ViewSonic's claim 19 construction brief where we say, "Claims 35 and 55 of the 20 '601 patent each require the rear mountable flat display 21 panel be mounted to the housing. And in the 22 specifications they put before you in Exhibits 11 and 12, 23 there is no housing. So it's not a question of claiming. 24 I think it's an undisputed question of claim</p>	<p>1 right, we can all go home and I don't think they concede 2 that we're right on our claim construction. 3 Mr. Christenson or Mr. Ambrozy, do you concede that we're 4 correct in our claim construction? 5 THE SPECIAL MASTER: They don't need to 6 answer that, sir. 7 MR. NELSON: Yes. Well, okay. So, 8 anyways, I think the fact they're using our claim 9 construction, I might as well cite your Honor to their 10 claim construction brief, pages 30 and 31, where they say 11 capable means just that, just having the capability of 12 being mounted. Clearly, their product specs are capable 13 of being mounted. 14 Again, it's not about whether the claim 15 construction that ViewSonic proposes or LPL proposes 16 is correct. It's whether we have the right to this 17 information, whether it will lead to the discovery of 18 admissible evidence. 19 THE SPECIAL MASTER: I understand. 20 MR. CHRISTENSON: Your Honor? 21 MR. NELSON: Now, we went to back to RFP 22 85, Your Honor. And the reason we started with RFP 85 23 is because it had to do with the status report of their 24 production. That is how we started here. And we started</p>

Friday, March 2, 2007

SHEET 40 154	156
<p>1 with 85 because I said their bill of materials doesn't 2 say anything about mounting. As a matter of fact, their 3 witness today has testified that their bill of materials 4 had nothing to do with mounting the LCD module, but I 5 think for the record to be clear, I need to highlight all 6 of the RFPs that are tied to my request for production 7 specs, assembly drawings and instructions and samples and 8 I know we haven't dealt with samples yet. Forgive me for 9 adding that but I need to highlight all the RFPs because 10 it's not limited to 85 as Mr. Christenson and Mr. Ambrozy 11 suggests.</p> <p>12 Okay? No. 17 deals with the best mode 13 of practicing the invention. That would deal with all 14 the product specs prior to the filing date.</p> <p>15 No. 18 is the each mode --</p> <p>16 MR. CHRISTENSON: I'm sorry for 17 interrupting. Are those requests referenced in the 18 motion?</p> <p>19 MR. NELSON: They're -- you know, I'm 20 going to say this. I'm not sure that every one of the 21 requests I'm going to highlight right now is in the 22 motion but they're relevant to the documents. They are 23 pending requests.</p> <p>24 THE SPECIAL MASTER: Look, I'll permit</p>	<p>1 38, closely related to 37.</p> <p>2 And 39 is any nexus or lack of nexus to 3 the commercial success of the patents in suit.</p> <p>4 On these products specs, Your Honor, 5 there is some indication of whether or not the patents 6 are marked. And marking is actually an issue because 7 it actually perhaps ties to whether or not LPL even 8 believes that certain products are or are not in this 9 patent in suit. They clearly mark some, clearly do not 10 mark others, and so these product specs when it is side 11 mounting include the side mounting patents, others do 12 not. That is relevant to marking and the frequency of 13 marking. That is RFP 40 and RFP 53.</p> <p>14 57 has to do with the utility and 15 advantage of the patent, and that has to do with the 16 advantages of side mounting, front mounting or rear 17 mounting or, more specifically, the advantages of rear 18 mounting over side mounting, the advantages of rear 19 mounting over front mounting. And, again, that brings in 20 front mounting and side mounting into play.</p> <p>21 No. 58 is critical. It is the 22 noninfringing substitutes. And, again, front mounting 23 and side mounting would be relevant and noninfringing 24 substitutes.</p>
155	157
<p>1 you to make the record but let's do without being rabid 2 about it. Let's be ginger, please.</p> <p>3 MR. NELSON: Okay. 17 relates to the 4 best mode of practicing the invention.</p> <p>5 18 relates to each mode of practicing 6 the invention.</p> <p>7 25, the documents identified to LPL. 8 It's documents identified by us to LPL as prior art. 9 That would actually include all the product specs because 10 we always said they're prior art. Their side mounting 11 and front mounting is prior art and relevant prior art to 12 these claims.</p> <p>13 29 is actually critical. It's RFP 29 14 relates to the design, development and commercialization 15 of the subject of the patents in suit. RFP 29, the 16 design, development and commercialization of the subject 17 of the patents in suit.</p> <p>18 33 is related to the commercialization 19 of the patents in suits. Again, see how I'm getting 20 those post-filing dates now.</p> <p>21 36, all documents related to obviousness 22 or nonobviousness.</p> <p>23 37, it's documents related to commercial 24 success. Again, it's post-filing date.</p>	<p>1 63 and 65 are documents related to rear 2 mounted or rear mounting technology.</p> <p>3 71, I've got bolded here, all documents 4 related to flat panel display products that use or 5 practice any invention disclosed or claimed in the patent 6 in suit.</p> <p>7 No. 73 is all documents related to flat 8 panel display products that use or practice any invention 9 disclosed or claimed the foreign counterparts to the 10 patent in suit and the foreign counterparts in Korea 11 actually deal with side mounting.</p> <p>12 No. 77 is relating to the instructions, 13 directions or information related to mounting an LCD 14 module, including manuals, instructions, specifications 15 and drawings. And that's related to the product specs 16 because the product specs give instructions for mounting 17 and that also relates to any other documents that they 18 get to their customers that LPL gives to its customers 19 that provide any type of mounting information.</p> <p>20 78 is similar to 77 except instead of 21 seeking documents relating to an LCD module, it seeks 22 documents relating to a flat panel display device in case 23 LPL is trying to get around the definition of an LCD 24 module.</p>

Friday, March 2, 2007

SHEET 41 158	160
<p>1 79 relates to documents regarding</p> <p>2 mounting other than front mounting. It captures side</p> <p>3 mounting as well as rear mounting.</p> <p>4 84, 85 and 86 are requests relating to</p> <p>5 the structure, function and assemblage of LCD modules. I</p> <p>6 know we spent a lot of time on 85 today, but 84 is also</p> <p>7 relevant and 86 is perhaps the broadest, seeking all</p> <p>8 documents from January 1st, 1997 relating to parts of an</p> <p>9 LCD module that can be used for mounting.</p> <p>10 And then 103, it will be the last one,</p> <p>11 all documents from January 1st, 1997 forward relating to</p> <p>12 any method of mounting flat panel displays other than</p> <p>13 front mounting that LPL has used. So that would capture</p> <p>14 all the side mounting as well as rear mounting.</p> <p>15 So, Your Honor, I think we have already</p> <p>16 discussed the relevance earlier and now I have actually</p> <p>17 highlighted, I don't know, 15-20 RFPs that capture the</p> <p>18 documents that we seek. And I've tried, instead of going</p> <p>19 through the RFPs, I'm willing to limit it to product</p> <p>20 specs, assembly drawings and all documents that relate</p> <p>21 to mounting, fixing or attaching an LCD module to any</p> <p>22 structure, including mounting instructions provided to</p> <p>23 customers and that only leaves samples of the last topic.</p> <p>24 THE SPECIAL MASTER: Okay.</p>	<p>1 accused rear mounted products.</p> <p>2 MS. HO: Your Honor, that is not true as</p> <p>3 set forth in a letter we submitted today. That is just</p> <p>4 absolutely not true.</p> <p>5 THE SPECIAL MASTER: A letter submitted</p> <p>6 when?</p> <p>7 MS. HO: Today, this morning to Your</p> <p>8 Honor.</p> <p>9 MR. CHRISTENSON: Your Honor, I'm just</p> <p>10 giving the background.</p> <p>11 THE SPECIAL MASTER: Yes, go ahead.</p> <p>12 MR. NELSON: And, Your Honor, regarding</p> <p>13 the fact that there is a representation that ViewSonic</p> <p>14 never sought this information before, ViewSonic has --</p> <p>15 THE SPECIAL MASTER: Counsel, what I</p> <p>16 really don't need is for you to be going back and forth.</p> <p>17 It's just not going to be helpful.</p> <p>18 MR. NELSON: Well, LPL is saying we</p> <p>19 never sought the information before, Your Honor.</p> <p>20 THE SPECIAL MASTER: I understand.</p> <p>21 MR. NELSON: It's the plaintiffs don't</p> <p>22 need this information because their burden is not to</p> <p>23 show invalidity. So the documents that a defendant in a</p> <p>24 patent infringement suit are far different than the</p>
159	161
<p>1 MR. AMBROZY: Your Honor, it's Rel</p> <p>2 Ambrozy. I think the request is way too broad.</p> <p>3 THE SPECIAL MASTER: I understand. Let</p> <p>4 me do this. Let me do your record for a moment and see</p> <p>5 if I can see if that is satisfactory.</p> <p>6 The record will reflect those RFPs that</p> <p>7 counsel believes are implicated. I have the motion in</p> <p>8 front of me which describes the RFPs that Mr. Heisman</p> <p>9 said were at issue, and I will make some sense of it.</p> <p>10 Mr. Christenson.</p> <p>11 MR. CHRISTENSON: Yes. Thank you, Your</p> <p>12 Honor. I just wanted to point out that a couple quick</p> <p>13 points.</p> <p>14 First, as a general matter</p> <p>15 fundamentally, if Your Honor were to determine that the</p> <p>16 scope of discovery and trial in this case should include</p> <p>17 not only inventions, the patents in suit with respect to</p> <p>18 rear mounting but also front mounting and side mounting</p> <p>19 issues, we will be doing discovery for a long time and we</p> <p>20 should start talking about a new trial date because that</p> <p>21 is not the scope of discovery that any party so far has</p> <p>22 understood to be proper. And as you know, Your Honor,</p> <p>23 Tatung Company is resisting aggressively producing any</p> <p>24 information for the most part except for with respect to</p>	<p>1 documents that a patentee will seek. They're not going</p> <p>2 to be the exact same scope of documents.</p> <p>3 MR. CHRISTENSON: Your Honor, Cass</p> <p>4 Christenson. I wasn't finished earlier.</p> <p>5 THE SPECIAL MASTER: Yes, I know.</p> <p>6 MR. CHRISTENSON: If this is something,</p> <p>7 for example, that goes to damages that ViewSonic argues,</p> <p>8 then I think that is something that relates to everyone.</p> <p>9 But in any event, I don't think it's a proper scope of</p> <p>10 discovery. I think these are going far afield. Clearly</p> <p>11 the scope of discovery under the federal rules is broad</p> <p>12 and permissive but I think here we have an instance</p> <p>13 where we are getting outside the reasonable bounds of</p> <p>14 discovery.</p> <p>15 THE SPECIAL MASTER: I understand your</p> <p>16 position.</p> <p>17 MR. CHRISTENSON: And, Your Honor, I</p> <p>18 would also like to ask a question, if I may, which is</p> <p>19 there was some focus about this issue as to whether a</p> <p>20 module that is capable of being rear mounted practices</p> <p>21 the invention. And, Your Honor, my question is whether</p> <p>22 Your Honor thinks that is an important point? Because if</p> <p>23 you do, I would like to submit something you don't have</p> <p>24 in your record which is a copy of ViewSonic's most recent</p>